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Attorneys for Defendant  
Werner Enterprises, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

THOMAS ST. VINCENT,

Plaintiff,

vs.

WERNER ENTERPRISES, INC.;  
JANVIER SMYTH; and JEAN  
GETRO ROSIER,

Defendants.

Cause No. CV-08-73-M-DWM-JCL

**DEFENDANT WERNER  
ENTERPRISES, INC.'S  
AMENDED PETITION AND  
NOTICE OF REMOVAL**

Defendant Werner Enterprises, Inc., alleges as follows:

1. The above-entitled action was filed in the Montana Fourth Judicial District, Mineral County, on February 19, 2008, and is now pending in said Montana District Court.

2. The Summons and Complaint filed in this matter were served upon Defendant Werner Enterprises, Inc. ("Defendant Werner"), on or about

April 25, 2008.

3. Upon information and belief, and per the allegations contained in the Complaint, at the time of commencement of this action, the Plaintiff is believed to be a resident and citizen of Minnesota.

4. At the time of commencement of this action, Defendant Werner was and is now a corporation organized and existing under the laws of the state of Nebraska with its principal place of business in Sarpy County and was and is now authorized to do business in the State of Montana.

5. The Plaintiff alleges in the Complaint that, at the time of commencement of this action, Defendant Smyth Janvier was and is now a resident and citizen of the State of Florida.

6. Upon information and belief, at the time of commencement of this action, Defendant Jean Getro Rosier was and is now a resident and citizen of the State of North Carolina.

7. This is an action over which this Court has original jurisdiction under 28 U.S.C. § 1332(a)(1), and thus this action is removable to this Court under 28 U.S.C. § 1441(a) and (b).

8. The amount in controversy claimed by Plaintiff in this action, exclusive of interest and costs exceeds Seventy-Five Thousand Dollars (\$75,000.00). Attached hereto as **Exhibit A** is a copy of a letter from Plaintiff's counsel dated May 15, 2008 stating that the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

9. Defendants Smyth Janvier and Jean Getro Rosier have not joined in this Amended Petition and Notice of Removal because they have not yet

been served in this action.

10. Copies of the Complaint and Summons served upon Defendant Werner in said Montana District Court action are attached hereto as **Exhibit B**. Copies of all other pleadings which have been filed in the state court file were previously forwarded by the Clerk of the said court to this Court.

Dated this 23<sup>rd</sup> day of June, 2008.

/s/ Kristine J. Beal

Kristine J. Beal  
Attorney for Defendant  
Werner Enterprises, Inc.

### CERTIFICATE OF SERVICE

I, the undersigned, an employee of Beal Law Firm, PLLC, hereby certify that a true and correct copy of the foregoing was forwarded as set forth below, at Missoula, Montana this 23<sup>rd</sup> day of June, 2008.

<u>1, 2</u>	CM/ECF
<u>      </u>	Hand Delivery
<u>      </u>	Mail
<u>      </u>	Overnight Delivery Service
<u>      </u>	Fax
<u>      </u>	E-Mail

1. Clerk, U.S. District Court
2. Milton Datsopoulos, Esq.  
Datsopoulos, MacDonald & Lind, P.C.  
201 West Main, Suite 201  
Missoula, MT 59802  
[kprazak@dmlaw.com](mailto:kprazak@dmlaw.com)  
Attorneys for Plaintiff

/s/ Kristine J. Beal

Kristine J. Beal  
Attorney for Defendant  
Werner Enterprises, Inc.

DEFENDANT WERNER ENTERPRISES, INC.'S AMENDED PETITION  
AND NOTICE OF REMOVAL

**Exhibit A**

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**BEAL LAW FIRM, PLLC**

## Datsopoulos, MacDonald & Lind, P.C.

Attorneys at Law

Milton Datsopoulos  
Dennis E. Lind  
William K. VanCanagan  
Rebecca L. Summerville  
David B. Cotner  
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Erika R. Peterman  
Del M. Post  
Peter F. Lacny  
\* Matthew A. Baldassin  
Joslin E. Monahan

\* Also admitted in New Mexico & Texas  
+ Also admitted in Washington  
^ Also admitted in Massachusetts

May 15, 2008

Kristie Beal  
Beal Law Firm, PLLC  
121 Hickory St., Suite 4  
PO Box 8898  
Missoula, MT 59807-8898

**RECEIVED**

MAY 16 2008

Beal Law Firm

RE: **St. Vincent v. Werner Enterprises**

Dear Kristie:

Please be advised that I have reviewed your letter dated May 14, 2008 on this date in that I was in a case in Kalispell the last two days and did not return to my office until this morning.

You should be advised that the amount in controversy with the above-referenced case does exceed \$75,000.00. I will ask my office to set up a telephone conference at a mutually convenient time so that we can discuss this matter further.

Thank you.

Very truly yours,

Datsopoulos, MacDonald & Lind, PC

  
Milton Datsopoulos

MD/dll  
Enclosures: a/s

DEFENDANT WERNER ENTERPRISES, INC.'S AMENDED PETITION  
AND NOTICE OF REMOVAL

**Exhibit B**

---

**BEAL LAW FIRM, PLLC**

FILED THIS 19th DAY  
OF February 20, 08  
KATHLEEN M. BROWN, CLERK  
BY: MC

**Milton Datsopoulos**  
DATSOPOULOS, MacDONALD & LIND, P.C.  
201 West Main Street, Suite 201  
Missoula, Montana 59802  
Telephone: (406) 728 - 0810

Attorneys for Plaintiff

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MINERAL COUNTY**

**THOMAS ST. VINCENT,**

**Plaintiff,**

**vs.**

**WERNER ENTERPRISES, INC.;**

**JANVIER SMYTH;**

**And**

**JEAN GETRO ROSIER,**

**Defendants.**

Dept. No. #1  
Cause No. DV08-17

**SUMMONS**

**THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE-  
NAMED DEFENDANT: WERNER ENTERPRISES, INC. N R A I**

YOU ARE HEREBY SUMMONED to answer the Complaint in this  
action, which is filed in the office of the Clerk of this Court, a copy of which  
is herewith served upon you, and to file your answer and serve a copy  
thereof upon the Plaintiffs' attorney, Milton Datsopoulos of the law offices of  
Datsopoulos, MacDonald & Lind, P.C., 201 W. Main, Suite 201, Missoula,

**Summons**

1 Montana 59802, within twenty (20) days after the service of this Summons,  
2 exclusive of the day of service; and in case of your failure to appear to  
3 answer, judgment will be taken against you by default, for the relief  
4 demanded in the Complaint.  
5

6 WITNESS my hand and seal of said Court, the 19<sup>th</sup> day of February  
7 \_\_\_\_\_, 2008.  
8

9 CLERK OF DISTRICT COURT

10 (SEAL)

11 By Melanie A. Chaplin  
12 Deputy Clerk  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



FILED THIS 19<sup>th</sup> DAY  
OF February 20 08  
KATHLEEN M. BROWN, CLERK  
BY: /S/

1 **Milton Datsopoulos**  
2 **DATSOPOULOS, MacDONALD & LIND, P.C.**  
3 **201 West Main Street, Suite 201**  
4 **Missoula, Montana 59802**  
5 **Telephone: (406) 728 - 0810**

6 **Attorneys for Plaintiff**

7  
8 **MONTANA FOURTH JUDICIAL DISTRICT COURT, MINERAL COUNTY**

9 **THOMAS ST. VINCENT,**

10 **Plaintiff,**

11 **vs.**

12 **WERNER ENTERPRISES, INC.;**

13 **JANVIER SMYTH;**

14 **And**

15 **JEAN GETRO ROSIER,**

16 **Defendants.**

Dept. No.  
Cause No. DV-31-2008-0000017-NB

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

17  
18  
19 **COMES NOW Thomas St. Vincent, Plaintiff, and for his Complaint**  
20 **against Werner Enterprises, Inc., hereinafter "Defendant Werner",**  
21 **Defendant Janvier Smyth, hereinafter "Defendant Smyth," and Defendant**  
22 **Jean Getro Rosier, hereinafter "Defendant Rosier," states and alleges as**  
23 **follows:**  
24  
25

**IDENTIFICATION OF PARTIES**

1  
2 1. On or about March 26, 2006, Plaintiff had been a resident of the State  
3 of Alaska and was in transit to Flathead County, Montana. Plaintiff had  
4 obtained employment in Kalispell, Montana, where he intended to reside.  
5 Presently, Plaintiff resides in Minnesota.  
6

7 2. To the best of Plaintiff's knowledge, Defendant Werner is a trucking  
8 company incorporated in a state other than Montana, but is registered to do  
9 business in the State of Montana.  
10

11 3. To the best of Plaintiff's knowledge, Defendant Smyth is a resident of  
12 Florida and was an employee of Defendant Werner on March 26, 2006.  
13

14 4. To the best of Plaintiff's knowledge, Defendant Rosier was an  
15 employee of Defendant Werner on March 26, 2006. Plaintiff is without  
16 knowledge of the residence of this Defendant.  
17

**JURISDICTION**

18  
19 5. Jurisdiction is proper because this tort was committed within Mineral  
20 County, and involves a Defendant who is incorporated in a state other than  
21 Montana.  
22

23 //

24 //

**COMPLAINT**

1  
2 6. On or about the morning of March 26, 2006, Plaintiff was driving his  
3 pickup truck eastbound on Interstate 90 just east of the summit of Lookout  
4 Pass in Mineral County, Montana.  
5

6 7. Plaintiff was in the process of moving from Alaska to Flathead  
7 County, Montana. All of the Plaintiff's items of personal property were  
8 being transported in the bed of his truck.  
9

10 8. While traveling west on Interstate 90, on the eastern side of Lookout  
11 Pass, Plaintiff observed two cars pulled off to the shoulder of the highway,  
12 one of which was stuck in the snow berm. Plaintiff pulled over to the  
13 shoulder of the roadway and parked his truck in front of the two cars so as  
14 to assist them in freeing the vehicle which was stuck in the snow.  
15

16 9. As the Plaintiff and adult occupants of the other two vehicles  
17 attempted to free the car they heard loud noise coming towards them.  
18 Plaintiff observed a tractor trailer owned by Defendant Werner rapidly  
19 approaching – jack-knifed and totally out of control occupying both of the  
20 eastbound traffic lanes.  
21

22 10. Defendant Werner's tractor trailer was being operated by employee,  
23 Defendant Smyth, a newly hired employee who was in training.  
24  
25

1 11. Accompanying Defendant Smyth in the tractor trailer was Defendant  
2 Rosler, and who was in charge of training Defendant Smyth.

3 12. As the tractor trailer rapidly approached the parked vehicles,  
4 Defendant Rosler was asleep in the tractor trailer's sleeper compartment.  
5

6 13. To avoid being hit by the out-of-control tractor trailer, Plaintiff and the  
7 other adults present scrambled onto the snow berm.

8 14. The jack-knifed tractor trailer barely missed striking into the vehicle  
9 which was stuck in the snow. However, the tractor trailer violently collided  
10 with the rear of the car parked immediately in front of stuck vehicle; this  
11 vehicle was occupied by several small children who were trapped in the  
12 damaged vehicle.  
13

14 15. The tractor trailer then collided with Plaintiff's truck in a violent fashion  
15 causing extreme damage and scattering all of Plaintiff's personal  
16 belongings (being transported in the pickup bed) all over the road and  
17 snow.  
18

19 16. Plaintiff rushed to the vehicle with the children occupants in an effort  
20 to free them from the vehicle. The rear of the vehicle was severely  
21 smashed and there was a smell of gasoline in the air.  
22

23 17. To extract the children and avoid the risk of explosion, Plaintiff with  
24 great exertion attempted to force open the rear door, free the children, and  
25

1 move them to safety. Plaintiff, after great effort, freed the children and  
2 carried them while traversing deep snow to move them out of the road and  
3 away from the immediate danger.  
4

5 18. The incident caused the Plaintiff physical injury, property damage,  
6 and serious emotional distress.

7 **COUNT I - NEGLIGENCE OF DEFENDANT SMYTH**  
8

9 19. Plaintiff re-states and affirms the allegations set forth in Paragraphs 1  
10 through 18 as though fully set forth herein.

11 20. As operator of the tractor trailer, Defendant Smyth owed a duty to the  
12 Plaintiff, and all similarly situated individuals present on Interstate 90 who  
13 could be foreseeably injured by his careless actions, to act with reasonable  
14 care in the operation of the tractor trailer.

15 21. Defendant Smyth breached this duty of reasonable care by his  
16 negligent acts and omissions which include, but are not limited to the  
17 following:

18 (a) Failing to act in a reasonable and prudent manner;

19 (b) Failing to keep a proper lookout by being inattentive while  
20 driving;

21 (c) Failing to travel at a safe speed given the weather conditions  
22 which existed at the time;

23 (d) Operating a vehicle without due regard for the right, safety and  
24 position of Plaintiff; and  
25

1 (e) Failing to stop his vehicle and avoid collision with the Plaintiff's  
2 vehicle and the vehicles of others.

3  
4 22. As a direct and proximate result of Defendant Smyth's negligence  
5 Plaintiff has suffered physical injuries required by his efforts to scramble for  
6 safety, remove the children from the damaged car, and ensure they were  
7 moved to a position of safety; physical and mental pain and suffering;  
8 property damage; severe emotional distress; and out of pocket expenses.

9 **COUNT II - NEGLIGENCE PER SE OF DEFENDANT SMYTH**

10 23. Plaintiff re-states and affirms the allegations set forth in Paragraphs 1  
11 through 22 as though fully set forth herein.

12 24. Defendant violated Mont. Code Ann. § 61-8-303 (2007) and by failing  
13 to operate his vehicle in a reasonable and prudent manner given the snowy  
14 and icy road conditions. Defendant received a citation for this violation.

15 25. Defendant violated Mont. Code Ann. § 61-8-303 (2007) when he  
16 failed to operate his vehicle in a careful and prudent manner which  
17 endangered the life, limb, and property of the Plaintiff. Defendant did so by  
18 failing to remain attentive to the surroundings and position of other vehicles  
19 on the roadway, failing to drive at a proper speed for the given road  
20 conditions, and by failing to stop before striking Plaintiff.

21 26. Defendant was negligent per se in that:

22 (1) Defendant violated Mont. Code Ann. §§ 61-8-303 (2007),  
23 which is a safety statute;

24 (2) Mont. Code Ann. §§ 61-8-303 (2007) was enacted to protect a  
25 specific classes of persons;

(3) Plaintiff is a member of this class;

1 (4) Plaintiff's damages are the sort that Mont. Code Ann. §§ 61-8-  
2 303 (2007) was enacted to prevent; and

3 (5) Mont. Code Ann. §§ 61-8-303 (2007) was intended to regulate  
4 the class of persons of which Defendant is a member.

5 27. As a direct and proximate result of Defendant's negligent conduct,  
6 Plaintiff has sustained physical injuries resulting in medical treatment and  
7 expenses, mental pain and suffering; serious emotional distress, property  
8 damage, and out of pocket expenses.

9 **COUNT III – NEGLIGENCE OF DEFENDANT ROSIER**

10 28. Plaintiff re-states and affirms the allegations set forth in Paragraphs 1  
11 through 27 as though fully set forth herein.

12 29. As employee of Defendant Werner in charge and control of training  
13 and overseeing Defendant Smyth's driving techniques, Defendant Rosier  
14 owed a duty to the Plaintiff and all similarly situated individuals present on  
15 Interstate 90 who could be foreseeably injured by his failure to perform his  
16 job responsibilities with reasonable care, to act with reasonable care in the  
17 training and oversight of Defendant Smyth's driving techniques.

18 30. Defendant Rosier breached this duty of reasonable care by his  
19 negligent acts and omissions which include, but are not limited to the  
20 following:

21 (a) Failing to act in a reasonable and prudent manner;

22 (b) Failing to keep a proper lookout by being inattentive while  
23 driving;  
24  
25



1 (c) Failing to ensure that Defendant Smyth traveled at a safe  
2 speed given the weather conditions which existed at the time;

3 (d) Failing to remain attentive of the operation of the tractor trailer  
4 and give due regard for the right, safety and position of Plaintiff; and  
5

6 (e) By sleeping during the operation of the tractor trailer instead of  
7 overseeing the operation of the tractor trailer.  
8

9 31. As a direct and proximate result of Defendant Rosler's negligent acts  
10 and omissions, Plaintiff has suffered physical injury attributable to his  
11 efforts to scramble for safety, remove the children from the damaged car  
12 and ensure they were moved to a position of safety; physical and mental  
13 pain and suffering; property damage; severe emotional distress; and out of  
14 pocket expenses.

15 **COUNT IV - NEGLIGENCE OF DEFENDANT WERNER**

16 32. Plaintiff re-states and affirms the allegations set forth in Paragraphs 1  
17 through 31 as though fully set forth herein.

18 33. Defendant Werner owed a duty to the Plaintiff, and all similarly  
19 situated individuals present on Interstate 90 who could be foreseeably  
20 injured, to act with reasonable care in the hiring, training, and supervision  
21 of their employees.

22 34. Defendant Werner breached this duty by failing to hire, train, and  
23 supervise competent employees with the requisite skill necessary to safely  
24 operate its tractor trailers on public highways. Specifically, Defendant  
25 Werner placed the operator of the tractor trailer in the control of Defendants



1 Smyth and Rosier during a season of inclement and treacherous weather  
2 without reasonable experience, training, and competence.

3 35. As a direct and proximate result of Defendant Werner's negligence  
4 Defendant Smyth was not adequately trained or supervised by a competent  
5 trainer in the performance of his job duties.

6 36. As a direct and proximate result of Defendant Werner's negligence  
7 the Plaintiff has suffered physical injury attributable to his efforts to  
8 scramble for safety, remove the children from the damaged car and ensure  
9 they were moved to a position of safety; physical and mental pain and  
10 suffering; property damage; severe emotional distress; and out of pocket  
11 expenses.

12 **COUNT V – RESPONDEAT SUPERIOR**

13 37. Plaintiff re-states and affirms the allegations set forth in Paragraphs 1  
14 through 36 as though fully set forth herein.

15 38. Pursuant to the doctrine of *respondeat superior* Defendant Werner is  
16 liable for the negligent acts and omissions of their employees committed  
17 while engaged in business endeavors.

18 **COUNT VI – INFLICTION OF SEVERE EMOTIONAL DISTRESS**

19 39. Plaintiff re-states and affirms the allegations set forth in Paragraphs 1  
20 through 38 as though fully set forth herein.

21 40. Each of the Defendants owed Plaintiff a duty to act in a reasonable  
22 and prudent manner and to avoid injuring him through their carelessness.

23 41. Plaintiff was a reasonably foreseeable victim who would suffer from  
24 the careless acts and omissions of the Defendants.  
25

1 42. As a direct and proximate result of the incidents which occurred on  
2 the morning of March 26, 2006, which was attributable to the negligence of  
3 the Defendants, Plaintiff has and continues to suffer from severe emotional  
4 distress.

5 43. Plaintiff has and continues to suffer mental, emotional, and physical  
6 manifestations of this severe emotional distress.

7 **WHEREFORE**, having fully set forth Plaintiff's claims against the  
8 Defendants, the Plaintiff requests Judgment for damages resulting from  
9 Defendants' negligence and/or other wrongful conduct in an amount to be  
10 determined at the time of trial for:

- 11 1. All past and future medical expenses;
- 12 2. All past and future physical and mental pain and suffering;
- 13 3. For the severe emotional distress suffered by Plaintiff;
- 14 4. For the alternation of Plaintiff's normal course of life;
- 15 5. All out-of-pocket expenses and property damage;
- 16 6. For loss of past, present, and future earnings;
- 17 7. For diminishment of Plaintiff's earning capacity;
- 18 8. Plaintiff's costs of suit; and
- 19 9. Such other and further relief as the Court may deem just and  
20 proper.

21 Dated this 15<sup>th</sup> day of February, 2008.

22 DATSOPOULOS, MacDONALD & LIND, P.C.  
23 Attorneys for Plaintiff

24 By: 

25 Milton Datsopoulos

**DEMAND FOR JURY TRIAL**

The Plaintiff hereby demands a jury trial for all issues so triable.

DATED this 15 day of February, 2008.

DATSOPOULOS, MacDONALD & LIND, P.C.  
Attorneys for Plaintiff

By: 

Milton Datsopoulos